IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6530 OF 2005

Ashwini Sahakari Rugnalaya &
Research Centre. .. .. Petitioner
v/s.
1. Chief Commissioner of Income
Tax & ors. .. .. Respondents

Mr.Y.P. Trivedi, Senior Advocate with Mr.Pankaj Toprani with Ms.Usha Dalal for petitioner.

Mr.Ashok Kotangale with Mr.A.S.Rao for respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 5th December 2005

P.C. :

1. Heard Mr.Trivedi in support of this Petition. This Petition seeks to challenge the order dated 31st March 2005 passed by the Chief Commissioner of Income Tax, Pune, declaring that the petitioner-Cooperative Society is not eligible for exemption under Section 10(23C)(via) of the Income Tax Act, 1961 for the assessment years 1999-2000 to 2002-2003. The section provides that those organisations, hospitals or other institutions which are existing solely for philanthropic purposes and not for purposes of profit, will be eligible for the benefit as provided therein. The case of the petitioner is that the petitioner filled the necessary form for

the benefit and the officer proceeded to pass an order rejecting the Application.

2. It is submitted that the objectives of the petitioner-Society are for the benefit of the society at large and it is giving medical and surgical amenities to the citizens. Amongst the objectives, Clause 4(e) thereof states to give the citizens better facilities for medical health at a reasonable charge. The Income Tax Commissioner has held that the charges in this hospital when compared to other hospitals, were not at all in any way less.

3. Mr.Trivedi, learned Counsel appearing for the petitioner, submitted that subsequent to the order, the petitioner sought the information from the Commissioner by writing to him on 12th May 2005 as to how he came to that conclusion. Interestingly enough neither in this letter nor in the Petition any particulars given as to what are the charges in the petitioner-hospital and how they are lesser than other comparable hospitals.

4. In the Petition, it is stated that another hospital viz. Dhanraj Giraji Hospital has been given a benefit under this section. According to

the petitioner, its case is more or less similar to that of the said Dhanraj Giraji Hospital. Except for making this bald statement, no particulars are given as such of the charges in that hospital or those in petitioner's hospital. That is on information which is available to the petitioner and surely the petitioner ought to have made it available. In the absence thereof, it is not possible to accept its bald statement.

5. Mr.Trivedi submits that there is nothing wrong in making some profits as such and that by itself would not take away the character of philanthropic. He is certainly right in making this submission. A judgment of the Kerala High Court in **CIT vs. Pulikkal Medical Foundation Pvt. Ltd. reported in (1994) Vol.210 ITR page 299** also holds that "philanthropic" does not mean charity and that earning incidental profit should not be adversely viewed. The point herein is as to what is the philanthropic work that is being done by the petitioner. If merely running a hospital is to be stated as philanthropic activity without any additional benefit to the citizens, that cannot be accepted as philanthropic activity. "Philanthropy" must be shown as giving some benefit to the citizens concerned in the field in

which the activities are being run. In the present case, no particulars whatsoever were placed by the petitioner before the Commissioner of the Income Tax.

6. Even as far as the petitioner's own hospital is concerned, the Commissioner has pointed out as to how the fees are charged for OPD in paragraphs 8 and 9 of the impugned order. He has also referred to the payments received by the Members - Directors out of the gross profit and thereafter he has observed in para-11 of the impugned order that the charges payable by the patients are at par with any other hospital of the same kind in the region. Absence of any scheme providing confessional or free treatment to the socially or financially weaker sections of the population indicates that the receipts of the hospital were not different from those of the other privately run hospitals. This being so, the Commissioner of Income Tax was constrained to take the view that he has taken and we do not find any error in it.

7. In the circumstances, the Petition is rejected.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)